IN THE HIGH COURT OF DELHI

Crl.M.C.No.1542/2002

Satya Narain ..... Petitioner
! through: Mr. D.C.Mathur, Sr. Advocate with
Mr. Mohit Mathur, Advocate

VERSUS

$ Local Health Authority & Anr. ..... Respondents
^ through: Mr. Anil Soni, Advocate for State.

% DATE OF DECISION: 17.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Petitioner Satya Narain Gupta prays that order dated 27.9.1999 as also order dated 1.3.2002 passed by the learned Metropolitan Magistrate be quashed.

2. Vide order dated 27.9.1999, petitioner has been summoned to face trial in a complaint filed under Section 16 of the Prevention of Food Adulteration Act 1954. Vide order dated 1.3.2002 learned MM has dismissed an application filed by the petitioner seeking recall of the summoning order. In view of the

decision of the Supreme Court in *Adalat Prasad Vs. Rooplal Jindal & Ors.* (2004) 7 SCC 338 , it was conceded by learned counsel that the learned Metropolitan Magistrate could not recall the summoning order and hence learned counsel for the parties conceded that issue should be decided with reference to the summoning order.

3. Order dated 27.9.1999 is a cryptic order. It reads as under:-

> "Certificate received from Director CFL Colcotta. Perused. Contents revealed to both sides. Sample has been found adulterated at the accused by summoned."

4. Though, order dated 1.3.2002 need not be discussed, but as it would be relevant, it may be noted that reason why petitioner's application seeking recall of the summoning order was dismissed is a finding by the learned Metropolitan Magistrate that in case no nomination was made under Section 17 of the Prevention of Food Adulteration Act 1954 with the local health authority at Ghaziabad, being the managing partner of accused no.2 petitioner would be liable if complaint ultimately succeeded.

5. There are three accused in the complaint. Accused No.1 is Mr. Khalik Hasan. Accused No.2 is M/s Swastik Fragrances, a partnership firm. Accused No.3 is the petitioner.

6. A sample of Pan Masala manufactured by accused No. 2 was lifted from a depot in Delhi. Khalik Hasan was the depot incharge. After following the process of lifting the sample and sealing the same, on being tested, sample failing, it was stated in the complaint that as product was manufactured by M/s Swastik Fragrances and as petitioner was the managing partner of the partnership firm i.e. accused No.2, the partnership firm, the depot incharge at Delhi and the petitioner were liable to be punished for selling adulterated pan masala.

7. There is no assertion in the complaint that the complainant made enquiry from the local health authority at Ghaziabad, the place of manufacture of pan masala, to find out whether any nomination was made under Section 17 of the Prevention of Food Adulteration Act 1954.

8. It is not disputed by learned counsel for the State that one Vishwanath Ajmera was nominated on 23.2.1998 by the firm as the person responsible to prevent commission of offence by accused No.2 under the Prevention of Food Adulteration Act 1954. It is also not in dispute that the sample was lifted on 1.5.1998.

9. Thus, in view of the authoritative pronouncement by the Supreme Court in the decision reported as 1992 CRL.L.J. 1523 *R.Banerjee Vs. H.D.Dubey & Ors.*, the petition must succeed for

the reason, admittedly there are no averments in the complaint the offence was committed with the consent or connivance of or is attributable to any neglect on the part of the petitioner.

10. Suffice would it be to record that in *R.Banerjee's* case (Supra), it has been held that the person nominated under Section 17 of the Prevention of Food Adulteration Act 1954 would be responsible if offence is committed by a company (as per explanation to Section 17 company includes a firm or an association of individuals). It was further held that apart from persons so nominated, if a Manager, Secretary or Director of a company is sought to be made liable, there have to be specific averments in the complaint that the offence was committed with the consent or connivance of or is attributable to any neglect on the part of the said person.

11. Thus, if a partner of a firm is held accountable and there is a nomination under Section 17 by the firm, averments have to be made to justify accountability of the partner(s).

12. The petition is allowed.

13. Order dated 27.9.1999 summoning the petitioner to face trial in the complaint in question is quashed.

August 17, 2007 PRADEEP NANDRAJOG, J.
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